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THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 14388 OF 2000

DATED: 08-11-2005

Between

Bhagawati Oil Industries

(Non-edible cotton seed oil industry),

Rampur Road, Adilabad, rep. by its

Proprietor Rajiv Mithal, S/o Raghunath,

Aged 30 years, Business, R/o.H.No.3-6-460,

National High Way No. 7 Road,

Adilabad.

..... PETITIONER

And

The Govt. of Andhra Pradesh, rep. by its

Secretary, Industries and Commerce Department,

Secretariat, Hyderabad and others.

..... RESPONDENTS

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ORDER: (per Sri B. Sudershan Reddy, J)

The present writ petition has been filed seeking appropriate directions as against respondents 1 to 4 to issue revised final eligibility certificate duly fixing up the eligibility for sales tax exemption in respect of the petitioner's industry equal to 100% of the fixed capital investment i.e. to say cost of the unit in accordance with the guidelines in G.O Ms.No.498, Industries and Commerce (IA) Department, dated 16-10-1989.

Shorn of all the details, the petitioner claims that it is entitled to the grant of sales tax exemption to a tune of Rs.14,27,856/- and also investment subsidy to the extent of 20% of the capital cost. The final eligibility certificate vide proceedings No. I/486/2000 dated 06-06-2000 issued by the 4th respondent fixing the eligibility of the petitioner – industry for the sales tax exemption only to a tune of Rs.8,50,000/-, according to the petitioner, is illegal.

The facts in detail are not required to be noticed since the short question that falls for our consideration is whether the State Level Committee constituted for the purpose of deciding the grant of incentives under the liberalized incentive scheme under G.O.Ms.No. 498, dated 16-10-1989 had taken into consideration the relevant facts?

The guidelines for implementation of new package of incentives/liberalized state incentive scheme, 1989 are contained in Memo No. 2125/1A/89-1, dated 15-09-1990 which has been issued after issuing G.O.Ms.No. 498, dated 16-10-1989. Guideline No. 10 deals with the procedure claiming incentives. Guideline No. 10.3 which is relevant for the present purpose reads as follows:

> "State Level/Dist.Level Committees constituted in the Govt.order at Annexure-I will decide eligibility for capital investment subsidy in all cases and final eligibility of Sales Tax exemption in case of small scale Industrial Units and the State Level Committee will decide the eligibility of Sales Tax deferment to Large and Medium Scale Industries based on claim applications filed after commencement of production by the Industrial units".

It is the case of the petitioner – Industry that pursuant to the guidelines it had submitted claim application on 13-04-1993 after the commencement of commercial production on 18-01-1993 along with necessary certificates as is required to be filed in accordance with the guidelines. The total cost of the unit i.e. to say the amount spent for establishing the industry, according to the petitioner, is Rs.13,96,797/-. The petitioner is also stated to have submitted a statement of depreciation duly certified by the chartered accountant. It is specifically asserted in the affidavit filed in support of the writ petition that the State Level Committee without taking into consideration the claim application

dated 13-04-1993 as well as the certificates issued by the chartered accountant, issued final eligibility certificate

dated 06-06-2000 limiting and fixing the eligibility for sales tax exemption at Rs.8,50,000/- as against 100% of the total cost of the unit of Rs.14,27,856/-.

That a detailed additional counter affidavit has been filed by the General Manager, District Industries Centre, Adilabad admitting that the office had received the claim application
dated 13-04-1993 on 16-04-1993 duly enclosing chartered accountant's certificate dated 07-04-1993 for an amount of Rs.13,96,797/-. It is admitted that "basing on all the enclosures submitted the then GM., DIC has processed the application and arrived at Computed value Rs.8,50,000/- being the lease as per guidelines". It is thus clear that the State Level Committee constituted for the purpose of considering the eligibility of sales tax exemption in case of small scale industrial units has not taken any decision in the matter. That according to the guidelines referred to hereinabove and more particularly guideline No. 10.3, an appropriate decision is required to be taken by the State Level Committee and not by the General Manager, District Industries Centre. The decision taken by the General Manager, District Industries Centre is thus ultra vires.

We have gone through the records made available by the learned Government Pleader for Industries for our perusal, which do not disclose any consideration of the issue by the State Level Committee. The State Level Committee merely referred to the decision of this Court in the earlier round of litigation and accordingly noted that a final eligibility certificate is required to be issued to the petitioner – industry. The State Level Committee did not advert to the question as to what is the amount spent by the petitioner for establishing the industry and its eligibility to avail the sales tax exemption.

For the aforesaid reason, the impugned proceedings dated 06-06-2000 is set aside. The matter shall now be considered by the State Level Committee in accordance with the guidelines already formulated and notified by the Government. The State Level Committee shall now decide and fix the eligibility of the petitioner – industry and its entitlement for sales tax exemption with reference to the fixed capital investment i.e. to say the cost of the unit as envisaged in G.O Ms.No. 498, Industries and Commerce (IA) Department, dated 16-10-1989, within a period of three months from the date of receipt of a copy of the order. It is needless to direct the State Level

Committee to take the entire material including the material made available by the petitioner into consideration before an appropriate decision is taken in the mater in accordance with law. It is needless to direct that respondent No. 5 shall not take any coercive steps as against the petitioner until the matter is finally disposed of by the State Level Committee.

The Writ Petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.

(B. Sudershan Reddy, J)

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(S. Ananda Reddy, J)

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